

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**SONIA RIVERA, ROBERTO SEGUINOT,
JONNATAN REYES, CHRISTOPHER RIVERA,
ADA MORALES and RAFAEL NIEVES,**

**07 Civ. 5999 (DAB)
Affirmation in
Opposition to Order
To Show Cause**

Plaintiffs,

-against-

**THE CITY OF NEW YORK, RAYMOND W. KELLY,
Individually and as Police Commissioner, "Lieutenant
JOHN DOE #1, "Police Officer JOHN DOE #1", through
"Police Officer JOHN DOE #10 and "Police Officer JANE
DOE #1", the last twelve names being fictitious and
unknown to plaintiffs, the persons or parties intended
being New York City Police Officers,**

Defendant(s).

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PETER R. SHIPMAN, an attorney duly licensed to practice law before the Southern District
of New York, hereby affirms the truth of the following under the penalties of perjury:

1. I am a member of the law firm of CODELIA & SOCORRO, P.C., attorneys for the
plaintiffs in the above-entitled action, and as such, I am fully familiar with all of the facts and
circumstances of this case. I make this affirmation based upon the contents of the office file, which
information I believe to be complete and true.

2. This action under 42 USC § 1983 for violation of Plaintiffs Constitutional rights was
commenced in good faith by filing and service of the Summons and Complaint upon the City of New
York. A copy of the summons and complaint is annexed hereto and made apart hereof as **Exhibit**
"A", and copy of service is annexed as **Exhibit "B"**.

3. As is a customary experience of this office we have not received any professional cooperation or even minimal responses in general from Corporation Counsel Office division of special federal litigation, which represents the defendant City of New York.

4. While it is true that plaintiffs offered to supply authorizations to defendant to unseal the criminal file of plaintiffs, and one plaintiff, Rafael Nieves, has not responded with an authorization, all other remaining plaintiffs (five) have provided duly executed authorizations long ago. (October 2007) Copies annexed hereto as **Exhibits "C"**.

5. Despite the So Ordered memo filed on October 3, 2007, extending the time for defendant to serve an answer upon receipt of duly executed unsealing authorizations from Plaintiffs, the defendant could have and should have served an answer to the complaint within weeks of it's receipt of the five remaining Plaintiffs' authorizations.

6. Moreover, there is nothing in the FRCP which entitles a defendant to refuse to answer a complaint until defendant has seen all of the underlying criminal files in a 42 USC §1983 action. In sum, there is no legal excuse at all for Defendant City to have failed to serve an answer on the Plaintiffs, particularly where the Defendant City of New York has been provided with most of the duly executed authorizations long ago.

7. As for the Plaintiff Rafael Nieves who has yet to provide an authorization, numerous attempts have been made to contact him since defendant requests but no response was received. Only recently upon thorough investigation, has it come to our attention that Plaintiff Rafael Nieves is currently incarcerated at Livingston Correctional Facility in Mount Morris, New York 14510, (near Rochester, New York).

8. On March 26, 2008 a letter in English and in Spanish was sent to Plaintiff Rafael Nieves attached with an Affidavit to Withdraw as a Plaintiff in this matter and withdraw his claims

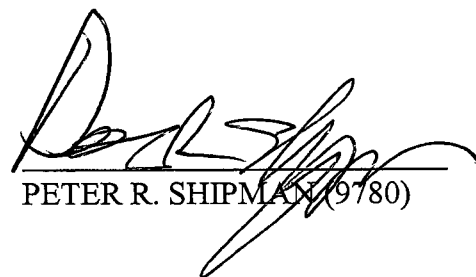
against said Defendants. Again no response was received by this office.

9. This office had no other choice but to visit Plaintiff Rafael Nieves personally, in order to obtain his signature on an Affidavit to Withdraw. On June 26, 2008 Myrna Socorro, partner of Codelia & Socorro, P.C. had to travel by air to visit Plaintiff Rafael Nieves at the correctional facility near Rochester, New York, and then obtained an Affidavit to Withdraw which was fully executed. He has thus withdrawn his claims in the Complaint against the instant defendants. A copy of the fully executed affidavit is attached hereto and made apart hereof as **Exhibit "D"**.

10. By virtue of the foregoing, plaintiffs **SONIA RIVERA, ROBERTO SEGUINOT, JONNATAN REYES, CHRISTOPHER RIVERA, and ADA MORALES** have acted in good faith throughout its action and should not be penalized for the lack of cooperation of Plaintiff Rafael Nieves, nor the intransigence of Defendants City of New York.

WHEREFORE Plaintiff respectfully requests the instant motion for failure to prosecute be denied in its entirety and a order be entered into ordering defendant to serve an answer within ten days to Plaintiffs complaint, or in absence thereof of an answer entry of default in pleading should be entered, together with such other and further relief as to the Court seems just and proper.

Dated: Bronx, New York
June 27, 2008



PETER R. SHIPMAN (9780)